TERRITORIAL LEGISLATION BY GOVERNOR AND JUDGES

The ordinance of 1787 contained a remarkable provision for legislation in the northwest territory until it should reach a population sufficient to entitle it to the second grade of government with an elected assembly and legislative council. This provision was that "the Governor and Judges, or a majority of them, shall adopt and publish in the districts such laws of the original states, civil and criminal, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time which shall prevail in said district until the organization of the General Assembly, unless disapproved of by Congress."

The same provision was carried into the governments provided by congress for the territory of the United States south of the river Ohio in 1790, for the territory of Mississippi in 1798, Indiana in 1800, Michigan in 1805, and Illinois in 1809, and this extraordinary form of legislative body, uniting the executive and judiciary in a legislature, lasted for periods ranging from two years in the case of Mississippi, to nineteen years in the case of Michigan. A survey of the way in which this system worked, violating as it did the fundamental principle of the separation of powers, may be of interest.

NORTHWEST TERRITORY

The same congress which adopted the ordinance of 1787, on October 5 following elected Arthur St. Clair governor, and Winthrop Sargent secretary of the new territory, and on October 16 elected three judges,—Samuel Holden Parsons, John Armstrong, and James Mitchell Varnum, thus completing the organization. It was not until July 15, 1788, however, at Marietta, that the governor together with two of the judges—Parsons and Varnum—met for the first time in the capacity of a legislature.

The first legislative act was entitled "A law for regulating

and establishing the militia . . . By his Excellency Arthur St. Clair Esquire, Governor & Commander in chief & by the honourable Samuel Holden Parsons and James Mitchell Varnum Esquires, Judges.''[1]

This act did not purport to be adopted in whole or in part from the laws of any one or more of the original states, nor was it in fact so adopted. It was drawn by Judges Parson and Varnum and passed as an absolutely original act. A few days later the same judges sent to the governor a draft of a bill relating to estates held in common, and on July 29 the governor replied, severely criticising the proposed law; this apparently ended the project. In the letter Governor St. Clair expressed a doubt whether the existing legislature was competent to originate such a law, as they were empowered only to adopt laws.[2]

He further said: ''I suspect we are overpassing the line of our duty in forming new laws in any case; and when we do, the necessity of the case only can be our justification. The Ordinance of Congress empowers us to adopt and publish such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district. In departing from that rule, we certainly expose ourselves to censure from Congress, and besides, there may be some doubt of the validity of such laws as we adopt and publish under any other. . .

''I agree to the militia law fully, under the impression of these sentiments, because the necessity of self-defense must supersede other considerations.''[3]

To this the judges replied on the following day discussing at some length the question whether in the adoption and publication of laws they were literally confined to the laws of the old states; they were of the opinion that a strict and liberal construction of the ordinance would defeat its purpose. In a new colony many prospects and objects arose to which old countries

[1] *Laws of the territory of the United States northwest of the Ohio river, passed at the first session of the general assembly begun and held at Cincinnati, on Monday the 16th day of September A. D. 1799; also certain laws enacted by the governor and judges of the territory from the commencement of the government to December 1792* . . . (Cincinnati, 1800), 1833.

[2] *The St. Clair papers: the life and public services of Arthur St. Clair, soldier of the revolutionary war; president of the continental congress; and governor of the Northwest territory; with his correspondence and other papers* (Smith ed. — Cincinnati, 1882), 2: 67.

[3] *Ibid.*, 2: 68.

were strangers. The clause in question admitted of two constructions; one, that they could adopt entire laws of any of the old states, *literatim et verbatim, mutatis et mutandis*, for their state only; the other that they could take such parts of any particular law as were necessary, and by inference, different parts of different laws of two or more states upon the same subject and in that event the diction should be rendered uniform. The element of necessity referred to in the governor's letter could have no application if a literal construction were to be followed.

In view of all the conditions they came to the conclusion that they were entitled to adopt such laws as were necessary and best suited to the district, provided they were not repugnant to the laws of original states or of some one or more of them. All laws adopted by them were subject to the negative of congress and to the necessity that the governor and two of the judges, or that all of the judges should agree.[4]

On August 7 the governor replied to these contentions in a long letter. He had a high conception of the governor's position and dignity, and the suggestion in the judges' letter that a law might be adopted by the three judges without the governor did not at all meet with his approval. While conceding that the punctuation in the ordinance favored the judges' construction, he believed that congress intended that the assent of the governor should be necessary to the adoption of any law, and that the phase in question should be construed as if it read:

"The Governor and the judges, or a majority of them, provided the Governor be one of that majority, shall [adopt and publish laws], etc." He also strongly dissented from the position that they had power to make a law consisting of different parts of laws of different states and to change the diction.[5]

This ended open differences on these matters, and no further question about their powers was raised until May, 1795, when the governor and two judges — Symmes and Turner — met at Cincinnati, and between May 28 and August 26 adopted and made thirty-five laws, most of them purporting to be adoptions from the Pennsylvania code, and being the first laws of the territory which followed the ideas of the governor.[6]

[4] *St. Clair papers*, 2: 70.
[5] *Ibid.*, 2: 74.
[6] *Ibid.*, 2: 353.

This session was preceded with a lengthy address by the governor to the judges, and a reply by them. In his address the governor alluded to his interchange of views with the former judges upon their powers to adopt or make laws, and he adhered to the views then expressed by him which he argued had received a confirmation in the fact that at the last session of congress the house passed a bill disapproving the acts passed in 1792, which failed to pass the senate only because that body considered the acts void without any action on the part of congress.[7] He therefore advised a repeal of all the laws which had been passed, and the adoption of new ones from some or all the original states. Judges Symmes and Turner replied promptly that they had always been of the opinion that the language of the ordinance was properly capable of the construction that the governor and judges had the power either to adopt or make laws, but in view of his report of the action of congress and its sentiments they were willing to meet him on the ground of adoption only of laws. From a reiteration in his address of his claims to negative an act, they dissented absolutely.[8]

Eleven laws were passed at a legislative session held in April and May, 1798; these were the last legislative acts of the governor and judges, as the territory passed to the second grade of government the following winter.

In accordance with the provisions of the ordinance the laws of the territory were sent to the government at Washington; those passed in 1788 and 1790, in the winter of 1791-1792, and on February 22, 1792, they were laid before the house of representatives. On February 27 they were referred to a special committee,[9] and on March 5 the laws passed in 1791 which had in the meantime been received at Washington were referred to the same committee.[10] The report of the committee was considered on March 23 and the bill ordered to be brought in to carry out the report.[11] On May 8 this bill was passed by the house, sent to the senate, passed there, and approved the same day by the president.[12]

[7] In this statement the governor was mistaken. See below.
[8] *St. Clair papers*, 2: 363 ff.
[9] *Annals of congress*, 2 congress, 1 session, 428.
[10] *Ibid.*, 2 congress, 1 session, 434.
[11] *Ibid.*, 481.
[12] *Ibid.*, 601, 140.

This act disapproved and thereby nullified an act passed by the governor and judges December 27, 1788, and by necessary inference, since all the laws passed up to that time were considered, approved all the others. It may be well to notice that the law disapproved of was opposed, not because it was a law *made* instead of *adopted*, but because it provided a statute of limitation on certain actions which would not operate fairly and uniformly.

On January 21, 1794, the laws passed in 1792 were sent to congress and in the senate were referred to a committee which on April 18 recommended that they be referred to the next session of congress; this was done.[13]

In the house the committee to which the laws were referred reported May 24, 1794, in favor of disapproving all the laws on the ground that they were passed by the governor and judges "on the idea that they were possessed generally of legislative power and either have not in whole or in part been adopted from laws of the original states."[14] Congress adjourned until the following November before any action was taken on this report.

The house considered the report on February 12, 1795, and amended it by excluding all reference to the reasons stated in the report.[15]

On February 16, a joint resolution disapproving all the acts except one, but without stating any reason therefor, passed the house and was sent to the senate; there it was referred to a special committee which on February 21st reported in favor of the senate's not concurring in the resolution, and on the same day the senate adopted the report which disposed of the matter.[16] The fifteenth of January, 1799, a resolution was offered in the senate for the appointment of a committee to examine the laws adopted in the northwest territory and to report how far they were "authorized or expedient," and on January 18, a committee was appointed to examine the laws and report how far they were "expedient,"[17] but no report was ever made or any further action taken. This was the last time the acts of the gov-

[13] *Annals of congress*, 3 congress, 1 session, 84.

[14] *American state papers: miscellaneous*, 1: 82.

[15] *Annals of congress*, 3 congress, 2 session, 1214.

[16] *Ibid.*, 380.

[17] *Ibid.*, 5 congress, 3 session, 2202-2203.

ernor and judges of the northwest territory were acted upon in any manner by congress.

MISSISSIPPI TERRITORY

The act creating Mississippi territory was approved April 7, 1789; Winthrop Sargent, then secretary of the northwest territory, was appointed governor and William McGuire, Peter B. Bruin, and Daniel Tilton, the judges. The governor left Cincinnati for his new post about July 1, arriving at Natchez August 6. Judge Bruin lived in the territory, but Judge Tilton did not arrive until January, 1799, and Judge McGuire not until the July following. Two judges, however, together with the governor were sufficient to constitute the legislative body, and the first legislative act bears date February 28, 1799, and is entitled "A law establishing militia." It does not purport to be taken from or based upon the laws or code of any other state.

In a letter written March 13, 1799, to Timothy Pickering, secretary of state, Governor Sargent said: "We are at length legislating, but destitute of the laws of the several states, we necessarily make instead of adopting them, the right to which has heretofore been a question."[18]

Judge Tilton left for his former home in May, 1799, and Judge McGuire arrived in July; the second legislative session began the following September. In the spring of 1800 Judge Tilton returned, and on May 5 the third legislative session was held, on which occasion the governor formally addressed the legislature, consisting of himself and the two judges, in a written message. In the meantime for various reasons an active opposition to the governor had arisen; a convention was held and an agent appointed to present to congress the dissatisfaction of those represented in the convention, and January 13, 1800, a petition was presented to the house of representatives stating that the form of government which had been enacted by congress for Mississippi territory was bad in theory and worse in practice: that the executive, legislative, and judicial authorities, carefully separated and limited by the constitutions of the older states, were mingled in the hands of three or four individuals, and that this

[18] *Mississippi territorial archives, 1798-1803* (Rowland ed. — Nashville, 1905), 1: 110.

immense power had not been exercised with liberality or beneficence, and in some instances the provisions of the ordinance and of the constitution of the United States had not been followed. The petition prayed that although the territory lacked the number of inhabitants necessary to entitle it, under the ordinance, to the second grade of government, congress would adopt the legislation needed to permit it to take this step at once.[19] Various complaints had also been made directly to the governor that he and the judges had wrongfully undertaken to frame laws instead of adopting them from other states.

In his message the governor took the opportunity to refer to these matters, and said that he would not hesitate to concur in making any statutory laws, although he would prefer exact adoption from any of the original states when such provision would sufficiently apply.[20]

On one occasion Judges Bruin and Tilton drafted, signed, and sent a bill to the governor for his approval. He returned it with his express disapproval, however, and the judges seem to have accepted his position as fatal to the bill, for it was never treated or published as a law.

On June 15, 1800, Governor Sargent wrote a long letter to John Marshall,[21] then secretary of state, referring fully to the various charges in the petition in regard to the special charge of making instead of adopting laws, he said: "We began legislating with the Laws of the Northwestern Territory only — They had been long subject to the disapprobation of the Honourable Congress and *daring* not to doubt their attention we believed them good."

In another letter to Marshall on August 25,[22] he returned to the charge that the governor and judges were "making" laws, and said that they were very willing to admit it; that he, as secretary of the northwestern territory and acting governor, had fully concurred with the judges that they were a complete legislative body; that they never hesitated to manifest this to congress, and that the laws which had been enacted there as early

[19] *American state papers: miscellaneous*, 1: 203.
[20] *Mississippi territorial archives*, 1: 231.
[21] *Ibid.*, 1: 243.
[22] *Ibid.*, 1: 268.

as 1788 demonstrated this, and that these laws which were regularly transmitted to the general government were only disapproved in one solitary instance, thus evincing the perfect confidence of congress with them in sentiment upon that very important subject. And as further evidence that this attitude was the proper construction of the ordinance he cited the fact that in 1792 congress passed an act referring to the laws "that have been or may hereafter be enacted by the Governor and Judges," which provided that the governor and judges were "authorized to repeal their laws by them made" and therefrom inferred their most incontestible right to the very essential and statutory measure of enacting as well as adopting laws.

Two months before this, however, on June 24, congress had passed an act providing a legislative body for the territory, and no further meetings of the governor and judges were held.

The laws passed prior to June, 1799, were sent to Washington and transmitted by the president February 14, 1800, to the house of representatives, which referred them to the committee having in charge the petition and remonstrances from Mississippi territory. On May 8 the committee reported a resolution recommending the disapproval of two of the laws.[23] The next day the resolution was passed and sent to the senate, which on May 12 referred it to a committee; this body the next day reported an amendment which recited the provision in the ordinance conferring legislative power and drew therefrom the conclusion that the governor and judges could only adopt and publish existing laws from state codes; as it plainly appeared that these laws had been *enacted*, not *adopted*, it was important to correct such a practice, and the amendment accordingly provided that all the acts enacted from the commencement of the territory to June 30, 1799, should be disapproved.[24] The senate, however, disagreed to the amendment, and postponed further consideration until the next session;[25] it never again took it up.

On January 1, 1801, the president sent to congress the laws passed by the governor and judges from June 30 to December 31, 1799, but no action was taken by either house.

[23] *American state papers: miscellaneous*, 1: 214.
[24] *Annals of congress*, 6 congress, 1 session, 182.
[25] *Ibid.*

In all, thirty-nine laws were enacted by the governor and judges of the Mississippi territory, all violating the technical letter of the ordinance, but having the tacit approval of congress.

SOUTHWEST TERRITORY

This territory was created by act of May 26, 1790. On June 17, 1790, the president appointed William Blount governor, and David Campbell and John McNairy judges of the new territory. They did not meet in legislative session for more than two years, and their first legislative act was passed November 20, 1792. A second act was passed March 13, 1793.

Although the territory did not pass to the second stage of government until December, 1793, the above were the only acts passed by the legislative body, and in those no reference was made to their being adopted from the codes or laws of other states.

On February 7, 1794, the law passed March 13, 1793, together with three ordinances, was sent by the president to congress. In the senate it was referred to a select committee which recommended on February 11 that "Congress do not disapprove of the same," and the senate agreed to this report.[26] In the house no action was taken. The first act was never brought to the attention of congress.

INDIANA TERRITORY

Indiana territory was created by an act of congress May 7, 1800, with a government similar in all important respects to that of the northwest territory of which it had formed a part. William Henry Harrison, who had been secretary of the northwest territory since the departure of Sargent to Mississippi, was appointed governor, and William Clark, Henry Vanderburg, and John Griffin, judges. Their first legislative session was held at Vincennes January 12, 1801, continuing until January 26, when they adjourned, having adopted seven laws and three resolutions.

All the laws except the repealing acts purported to be adopted from some state code or from the codes of more than one state.

Five of the laws used the codes of two states and one those of three states. Virginia was the favorite, eleven laws being taken

[26] *Annals of congress*, 3 congress, 1 session, 43.

in whole or in part from that state. Pennsylvania came next with five laws in part or whole to its credit, followed by Kentucky with three and New York and northwest territory each with one.

Other legislative sessions were held in 1802-1803. September 11, 1804, Governor Harrison issued a proclamation that Indiana had passed into the second grade of government, and no further legislative sessions of the governor and judges were held.

On February 14, 1803, the president sent to congress the laws of Indiana passed from January, 1801, to February, 1802. In the same year, December 8, the president sent all the laws which had been adopted since the last communication, but in neither house was any action taken.

MICHIGAN TERRITORY

Michigan territory was created by act of January 11, 1805, but by the terms of the law the new government did not take effect until July 1 following. The president appointed General William Hull governor, and as judges, Samuel Huntington, A. B. Woodward, and Frederick Bates. Huntington did not accept and John Griffin, then judge in Indiana was appointed; he did not take office, however, until the following year.

The first legislative session began July 2, 1805, with the governor and two judges present, and ended October 8, 1805; during this time thirty-four laws were adopted. The question arose early in the session whether they were limited to adopting laws from the thirteen original states, or might use the laws of any of the states which came into existence before the territory of Michigan was created, and Judge Woodward, to whom the question was referred, brought in a report which was adopted favoring the latter view.[27]

The position insisted upon by Governor St. Clair of the northwest territory that the governor's affirmative vote was necessary to the adoption of any law did not meet with favor in Michigan and in one instance at least a law was adopted against the express disapproval of Governor Hull.[28]

The second legislative session was held beginning September

[27] *Michigan pioneer and historical collections* (Lansing, 1892-), 8: 603.
[28] *Ibid.*, 31: 563.

6, 1806, and between that date and the cessation of political powers caused by the capture of Detroit in 1812 ninety laws were adopted. In many of the statutes each section ends by "The same being adopted from the laws of the original states, to-wit, the states of.....and.....as far as necessary and suitable to the circumstances of the Territory of Michigan," and in other cases the clause above quoted appears only at the end of the law.

In many, if not most cases, this phrase was an empty one and did not express the real facts, which were that the act was really drawn to fit the supposed needs of Michigan and was independent of any other law or code, although it might be based upon some of the same general ideas. It is undoubtedly true that all the words used in any section could have been found in the laws of the states referred to, but in any proper sense it was untrue. A citizen of Detroit, very hostile to the governor and judges, wrote to the *Pittsburgh Commonwealth* in 1807 the following amusing description of the way in which the governor and judges prepared the laws. "They parade the laws of the original states before them on the table and cull letters from the laws of Maryland, syllables from the laws of Virginia, words from the laws of New York, sentences from the laws of Pennsylvania, verses from the laws of Kentucky and chapters from the laws of Connecticut; as far as suitable to the circumstances of Michigan."[29]

The problems arising out of the construction of the language of the ordinance giving legislative powers had been realized by the governor and judges and under the leadership of Judge Woodward had been boldly faced and settled. While in Washington, after the first legislative session, Judge Woodward wrote to Madison, secretary of state, in May, 1806, that in legislating they had construed the ordinance to mean: first, the governor was merely a member of the legislative body, with the same powers—and no more—as those of other members; second, the word "laws" included parts of laws, hence it was not necessary for the legislative body to adopt the whole of a law from one state—it might take different parts of the same law from different states; third, the word "necessary" gave them the power of omitting any part of a law whatever; fourth, the words,

[29] *Pittsburgh Commonwealth*, September 16, 1807.

"suited to the circumstances of the district" entitled them to change in many particulars any law they might adopt; fifth, "original states" meant all states existing when Michigan became a territory. Under this construction of powers their actions were consistent.[30]

Congress, however, had had before it at that time for several months the views of the governor and judges upon the subject of legislation. The total destruction of Detroit by fire just before the new government arrived naturally brought about conditions which existed nowhere else, and called for legislation by congress regarding titles in the settlement. On October 10, 1805, Governor Hull and Judge Woodward united in a report to President Jefferson, who laid it before congress December 23.[31]

In the report they took occasion to say that the strict *adoption* of any code or even of any one law was impossible. The possession of all the codes, if it were possible, and a complete acquaintance with them would prove ineffective, or in many very simple cases a strict precedent would be searched for in vain. A desirable object must often be abandoned for want of a precedent that would apply and often, if attempted, might be defeated from a want of a strict correspondence between the law made and the precedent from which it professed to be adopted. The real security, after all, rested in the control of congress which could correct any law which gave dissatisfaction.

Congress never expressed any dissent from these principles and the governor and judges might well have thought, after the attention of congress had been so clearly challenged to this view of the matter, that they were justified in continuing their course in legislating. In fact, congress disapproved but one act passed by them, and it took that action, not on account of the method of enactment, but entirely because the *particular* law met with financial and banking opposition within the outside of congress.

On January 5, 1807, the president laid before both houses of congress the laws which had been passed in Michigan during 1805.[32] In the senate they were referred to a select committee which reported four days later recommending that the senate

[30] *Michigan pioneer and historical collections*, 31: 562.

[31] *American state papers: public lands*, 1: 247.

[32] *Annals of congress*, 9 congress, 2 session, 27.

should not disapprove of the laws, but no action was taken;[33] in the house the laws were referred to a select committee which took no action.[34] The laws passed in 1806 were received from the president February 12 and referred to the same committee.[35] On February 24, Mr. Quincy of the committee presented a bill disapproving of the act adopted September 19, 1806, incorporating the Detroit bank;[36] four days later this bill was considered, passed, and sent to the senate,[37] which passed it March 3. No other action was taken by congress upon any laws passed by the Michigan governor and judges, and that body continued to legislate until a legislative council was provided by act of congress in 1823. The last legislative act of the governor and judges in Michigan, and the last one in any part of the United States, was the adoption of a law June 3, 1822, signed by Governor Cass and Judges Woodward and Witherell; strangely enough it did not purport to be adopted from the laws of any state.

ILLINOIS TERRITORY

This territory was created by act of congress, approved February 3, 1809; on March 7 of that year President Madison commissioned Nathaniel Pope of Louisiana territory, secretary in and for the Illinois territory, and in the absence of Governor Edwards, who did not receive his commission until April 24, Pope began his official duties on April 28, 1809.

The first legislative act in the territory was on June 13, 1809, when the governor and two of the judges passed a resolution declaring the laws of the Indiana territory to be in force in Illinois. The same body passed three laws June 16 and one on June 19. During July eight laws were passed, two of which purported to be adopted from the Kentucky code. Another law was passed December 22. During 1810 twelve laws were passed of which four were repealing laws, two were adopted from the Kentucky code, two from the Virginia code, and two were apparently framed without reference to any state laws.

In 1811 the legislature passed eight laws, of which two were

[33] *Annals of congress*, 29.
[34] *Ibid.*, 253.
[35] *Ibid.*, 482.
[36] *Ibid.*, 619.
[37] *Ibid.*, 657.

repealing acts, two were adopted from Kentucky, one from Pennsylvania, one from South Carolina, and two were not adopted from any state. The last legislative act of the governor and judges was taken November 29, 1811,[38] although the territory did not pass to the second stage of government until late in the following year; members of the assembly being elected in October and the first meeting of the elected legislature being held at Kaskaskia November 25, 1812. None of these laws were reported to congress.

It will be observed that the practice in Illinois regarding adoption of laws varied. Out of 33 laws passed, 14 were adopted and in each such instance the law purported to be adopted from the code of some one particular state.

The last government to have a legislature constituted of a governor and judges was that of Michigan, which ended in 1824, and that territory was the only one whose legislative acts passed by governor and judges ever came before the courts for judicial construction as to the extent of the power granted by the ordinance of 1787.

In December, 1817, the governor and judges of Michigan passed an act incorporating the bank of Michigan. It purported to be adopted from the laws of New York, Ohio, and Massachusetts, but in fact was drawn to meet the situation in Michigan, and had only a general resemblance to any law in any one of the three states specified.

The bank began business in January, 1819, and was a successful and important institution for more than twenty years. In February, 1828, it brought suit in Albany, New York, against John R. Williams, its first president. The chief defense was that the act incorporating the bank was not valid; that it was a law enacted, not adopted from the laws of other states as required by the ordinance of 1787. Thus there was brought into controversy the very point which had been debated in the Northwest, Mississippi, and Michigan territories.

The circuit court having decided in favor of the bank, the case was appealed to the supreme court of the state; it affirmed the decision of the lower court.[39]

[38] *Laws of the territory of Illinois, 1809-1811* (*Bulletin of the Illinois State Historical Library*, volume 1, number 2).

[39] *5 Wend.*, 480.

The defendant removed the case to the court of appeals where it was heard in 1831.[40] Several opinions were filed, but all agreed in the result which was affirmance of the decision of the supreme court.

The opinion of Senator Sherman considered the meaning of the words "enact" and "adopt" and the claim that the governor and judges had power only to adopt a law entire from the laws of one state, but concluded that if they did not adopt a law containing greater powers than was contained in the laws from whence it was taken, they were within the limits of their powers.

The only case in the United States courts in which was considered the question of legislative power granted by the ordnance of 1787 was the case of Peck *v.* Pease, decided in 1853.[41] In the course of the opinion Judge McLean said: "Under the first grade of the territorial government of Michigan, the governor and judges were authorized by the ordinance of 1787 to 'adopt' laws of the original states, for the government of the territory, and the law in question seems to have been adopted from the state of Vermont. They had no legislative power, consequently they had no power to modify or alter the laws they adopted."

As under the facts of this particular case the decision did not depend upon a statute passed by the governor and judges, the language quoted was really only a dictum and cannot be considered binding authority.

WILLIAM L. JENKS

PORT HURON, MICHIGAN

[40] *7 Wend.*, 539.

[41] *5 McLean (U. S.)*, 486.